UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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NEW JERSEY CARPENTERS HEALTH FUND, ET AL.,

Plaintiffs,

v. 08 CV 5653 (PAC)

DLJ MORTGAGE CAPITAL, INC., CREDIT SUISSE, MANAGEMENT, LLC, f/k/a CREDIT SUISSE FIRST BOSTON MORTGAGE SECURITIES CORPORATION, ET AL.,,

Defendants.

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New York, N.Y.
November 8, 2012
3:00 p.m.

Before:

HON. PAUL A. CROTTY,

District Judge

APPEARANCES

COHEN MILSTEIN SELLER & TOLL, P.L.L.C.
Attorneys for Plaintiffs
BY: JOEL P. LAITMAN

BINGHAM MCCUTCHEN, LLP
Attorneys for Defendants
BY: SCOTT E. ECKAS

(Case called)

MR. LAITMAN: Joel Laitman, for the plaintiff.

THE COURT: Who is with you?

MR. LAITMAN: Michael Eisenkraft and Kenneth Rehns.

THE COURT: OK. Mr. Eisenkraft, Mr. Rehns.

MR. ECKAS: Scott Eckas, of Bingham McCutchen. With me at counsel table is my partner Susan Hoffman. Also with me at counsel table are my colleagues Colleen Loughlin and Jawad Muaddi.

THE COURT: Mr. Laitman, do you want to go first?

MR. LAITMAN: Yes, your Honor.

As your Honor is aware, we've made a motion for reconsideration to reinstate the three offerings that were dismissed on standing grounds as a result of the Goldman decision by the Second Circuit. Just to cut very directly to the ruling in Goldman and it's applicability to us, in our complaint, just as in the Goldman complaint, we allege Paragraphs 154 to 160 that the shelf registration which was the registration that each of the four offerings was issued from contained underwriting misstatements and that's the identical facts that were in Goldman.

Also identical in Goldman is, as in this case, the complaint alleges that has originator specific allegations that unite the offering that our client brought on with the offering -- with each the offerings, the three offerings at

issue.

So, for example, there are in the complaint specific allegations pertaining to New Century. New Century was the originator in the 2006-5 that our client bought from and is also an originator in 2007-2. WMC is an originator in 2005-6 and also an originator in 2006-4 and accredited is an originator in the 2006-5 and also in the 2006-6. And the complaint --

THE COURT: So there's two with a common 2006-5 and 2007-2 have the same originator, right, and the others have different originators?

MR. LAITMAN: No. No. Each -- the 2006-5 has three originators, New Century, WMC and accredited. And what the Second Circuit said is we have class standing to represent offerings that emanated from the same shelf registration that has a common originator with the 2006-5. I think that has an originator in common with those three. So there are three offerings at issue that we are seeking reinstatement. 2007-2 --

THE COURT: Right.

MR. LAITMAN: -- 2006-4 and 2006-6. 2007-2 has in common with our offering, our plaintiff's offering New Century as an originator.

THE COURT: So 2006-5 and 2007-2 have New Century.

MR. LAITMAN: Correct.

THE COURT: New Century was the sole originator for both?

MR. LAITMAN: Not the sole. They were one of the originators in both offerings and that's what the Second Circuit said. It does not have to be sold. In fact, in the Second Circuit case the common originators were, the one the plaintiff bought from was Green Point and Wells Fargo.

THE COURT: Yeah, but it's also clear from the Second Circuit's decision it was not Green Point and -- what was the other one?

MR. LAITMAN: Wells Fargo.

THE COURT: Then not part of the class action.

MR. LAITMAN: That's correct. But no one is disputing -- the defendants are not disputing that New Century was an originator in 06-5 our clients' offering. WMC and accredited were originators in our client's offering and that those are in common with each of these three other offerings. So we have the common originator.

THE COURT: I'll have to go back and check but my recollection is that New Century was the sole originator. And you are telling me, Mr. Laitman, that, I am incorrect?

MR. LAITMAN: You are incorrect.

THE COURT: OK.

MR. LAITMAN: It's one of the originators.

THE COURT: I understand there to be more than one but

I thought it was the sole. You are saying it's not the sole.

MR. LAITMAN: It's one of the originators.

THE COURT: Where do I find that in your complaint?

MR. LAITMAN: We cite to the prospectus. The prospectus, actually, gives you the percentages of the originators greater than ten percent and so it's, specifically, laid out. It's not a disputed fact.

THE COURT: Right.

MR. LAITMAN: I believe and my memory is that in the 06-5 New Century was, approximately, 33 percent of all the loans in the offering. And then you had other originators that had lesser percentages but the percentages under the second circuit decision is not an issue. It could be as little as --

THE COURT: One percent.

MR. LAITMAN: -- one percent. It's the commonalty of originator.

THE COURT: That's right. I am reading -- I don't know what the cite is on this, the ANICA against -- IPW against Goldman Sacks. I don't have the page but it says:

However to the extent certain offerings were backed by loans originated by originators common to those backing 2007-5 and 2007-10 then that's sufficiently similar. And the percentages vary 29, 36, 9, 3 and so the percentages really don't make my difference so longs as they're this common and that's your point.

MR. LAITMAN: That's exactly right. And that is undisputed. It is undisputed in this case that we have common originators. And just like Goldman we have a shelf offering that's responsible for emanating from which all four offerings emanate from and that those guidelines are actually, in our case, are reiterated identically in each of the prospectuses at issue. And I would just refer your Honor to Exhibit 9 in the Eisenkraft Affidavit because what we did was --

THE COURT: You pulled out all the common statements --

MR. LAITMAN: Right.

THE COURT: -- and the shelf registration.

MR. LAITMAN: And each of the three -- well, our offering and then each of three offerings at issue.

THE COURT: Tell me why it's not -- there's also an argument about the statute of limations.

MR. LAITMAN: OK. The statute of limitations argument breaks out into, actually, two pieces. The defendants take the position that with respect to the 200-6 and 2006-4, OK, with respect to those two offerings the Court had already determined using the inquiry notice standard that those claims were time-barred. That argument fails for two reasons.

First, what has happened in the Second Circuit since your Honor made the ruling on the intervention motion that they're referring to is that the Second Circuit and the city of

Pontiac has said that with respect to the Exchange Act claims the accrual period for the Exchange Act is no longer determined on inquiry notice. It is no longer when a reasonable investor should have known of the misstatement or omission.

What the new standard is in the Second Circuit applying Merck is that it's no longer inquiry notice. It's the point in time that the claim would have survived the motion to dismiss under 12(b)(6). And what has happened in the Southern District is eight district courts have ruled in the context of these mortgage backed securities, have ruled that the city of Pontiac case from the Second Circuit applies to the Securities Act and that's the accrual period that should be used.

So the inquiry notice accrual period is no longer the appropriate accrual period for purposes of the statute of limitations. And in our case the complaint that survived the motion to dismiss relied heavily -- and your Honor's decision focused on it -- on the collapse in the ratings from Triple A to junk for most of these bonds. The point is that that did not occur until after one year prior to the filing of the amended complaint. That is, after March 23, 2008. So the data that's relied upon in the complaint that survived dismissal which is now the new standard for the accrual of the statute of limitations, the data is within one year. It was 2009 data.

So for the two offerings that -- our first point is that under the current standard for statute of limitations the

two offerings, 2006-4 and the 2006-6, the notice did not accrue until well after the date that was in the intervention decision. Your Honor used December 20, 2007. Even more importantly, your Honor didn't make a finding that that was -- we do not believe that your Honor made a finding that December 20, 2007 was the inquiry notice date. Your Honor -- using your Honor's language, assumed that that was the date based on a statement that was made in the footnote in the movant's brief.

However, when you look at the downgrade evidence it was very controverted as of that date. So even if you didn't accept the notion that the standard has changed in the Second Circuit, under the inquiry notice standard it was controverted because while Moody's downgraded the bonds in 2007 SMP and other rating agencies on the very same bonds kept them at very high Triple A ratings or Double A ratings. And so there's no basis to dismiss on statute of limitations grounds because under the Stair case in the Second Circuit and it's been well established in order to dismiss on statute of limitations ground it's got to be uncontroverted.

Here that date that your Honor used in the Intervention decision and we've now annexed as exhibits, the evidence showing it was directly controverted while one rating agency in 2007 downgraded to junk many other rating agencies kept these at very high investment grade ratings. And so that cannot be -- the December 2007 inquiry notice date cannot be

the basis for dismissing on statue of limitations grounds those two offerings. So whether when you apply the correct standard, that is the city of Pontiac standard, certainly, the claim could not have been pled prior to one year from the filing the amended complaint. And even if you filed the old inquiry notice standard for those two offerings, there was controverted evidence that no reasonable investor would have begun to investigate a misstatement with respect to these bonds while SMP or Moody's or one of the other rating agencies maintained a very high rating on the bonds.

The last point that I wanted to make, your, is with respect to the 20078-2 offering there is, absolutely, no basis, no argument even for dismissal on statue of limitations grounds. Your intervention decision didn't deal with that offering. That's number one.

Number two, the reason we put in a footnote the December 20, 2007 inquiry notice date and that's the one your Honor adopted, the reason we put in that is because that was the first date that the Triple A bonds were downgraded to junk.

In the 2007-2 offering it is undisputed that the first time that that happened was April 2008. So it was within the year prior to the filing of the complaint where the claims with respect to that offering were first alleged. So under any analysis if you use the inquiry notice analysis, the exact analysis that your Honor used in the intervention decision

which we don't think is appropriate for all the reasons I've said, but if you apply that exact analysis this is not time-barred by the statute of limitations.

THE COURT: So your point then, Mr. Laitman, is sum up in 25 words or less, what is it? We should amend the pleadings to allow in light of ANICA, the Goldman Sacks decision and the city of Pontiac decision, we should amend the -- allow you to amend the pleadings so that you have standing under Rule 23 to bring the claims on behalf of purchasers of all of 2006-5, 2007-2, 2006-6 and 2006-2.

MR. LAITMAN: That's correct.

THE COURT: And there is no impediment in the statute of limitations.

MR. LAITMAN: There is no impediment in the statute of limitation.

THE COURT: Why don't you save five minutes for rebuttal.

Mr. Eckas. Thank you, Mr. Laitman.

MR. ECKAS: Thank you, your Honor. May I stand here?

THE COURT: Whatever is most convenient for you.

MR. ECKAS: Thank you. I have a stack of papers in front of me so that is very helpful.

Your Honor, we're here today on the plaintiff's motion for reconsideration of the Court's motion to dismiss on the basis of standing three transactions. Plaintiff has not moved,

at least at this time, for the Court to reconsider its decision in the intervention motion which is where the Court made its rulings on statute of limitations. I bring that up at the beginning and I'll explain a little bit more in just a moment, your Honor, to highlight the fact that in our view there is a difference between whether someone has standing and whether the statute of limitations has run.

THE COURT: All right.

MR. ECKAS: We will explain why we think that the Goldman case in fact, when properly understood does not provide standing.

THE COURT: Let's take that one up first.

MR. ECKAS: Certainly, your Honor.

As we understand the Goldman case, your Honor, it certainly recognizes and approves of the generally accepted meaning of standing, that being someone must have a personal injury in order to bring suit.

THE COURT: OK. Now, let's go over the basics. You agree that the plaintiffs have Article III standing?

MR. ECKAS: For 2006-5, yes, we do, your Honor.

THE COURT: Not for the others?

MR. ECKAS: We do not, that's correct, your Honor.

THE COURT: That's just what -- isn't that what the Court held, even if you had Article III standing then you had statutory standing, then the issue was whether or not you had

standing for Rule 23 purposes. And if you had Article III standing, and they do, with at least they had been injured, right, as to 2006-5, then they have statutory standing as to that as well. So they have standing. They belong here in the courthouse.

MR. ECKAS: Against the 2006-5 we would concur with that, your Honor. As your Honor knows they did not purchase in the other deals.

THE COURT: Yes, I understand.

MR. ECKAS: The issue then becomes --

THE COURT: Under the Second Circuit they only purchased ANICA IBPEW purchased 2007-5 and 2007-10 and yet, they were allowed to proceed on a number of our trusts simply because they were common originators.

MR. ECKAS: We don't --

THE COURT: They had not purchased 2007-3 or 2007-4 and 2007-6 but there are Article III standing under statutory standing was enough to get over those hurdles as I understand the decision.

MR. ECKAS: If I may, your Honor, I believe we read the decisions slightly different. In particular, I am focusing on the end of the second paragraph in the decision which is the introduction to the decision. And in this the Second Circuit points to the fact that there must be similar or identical misrepresentations in the offering documents. I am associated

with certificates originated about the same lenders. So it's not enough that there just happens to be overlapping originators which is not unlikely because there often are hundreds but there needs to be overlapping originators relating to the disclosures that were allegedly incorrect.

THE COURT: Well, it's an interesting thing about how you read Second Circuit opinions. They start out one way but when they came to the conclusion at the end and found out and they disclosed to us for the first time why Judge Cedarbaum was in error, they point to the common originators. That is what's important, not the language with the shelf registration, not the language in the supplemental prospectus but the fact that there were common originators. That's the way I read it, Mr. Eckas.

MR. ECKAS: OK. Your Honor, I guess we're focusing on the similar set of concerns language and as we had read that and interpreted it and had tried to make a chart that we'd hoped would be of assistance it seemed to us that what the Court's focused on is if someone had standing was injured and the basis of their injury i.e. the alleged misrepresentation also formed the basis for the other person's injury, then it could proceed on behalf of other person as well.

So, for example --

THE COURT: Even though they hadn't purchased that?

MR. ECKAS: Yes. So we would agree, your Honor, that

under a reading of the Second Circuit's opinion there are situations where a plaintiff can represent purchasers of securities in which the plaintiff did not itself purchase. We just do not reed it nearly as broadly as plaintiffs do. For us, your Honor, there has to be identical misrepresentations. And there has to be overlapping originators.

If it's any help to your Honor in our memorandum of law --

THE COURT: Yes.

MR. ECKAS: -- we have done a chart on page five where we've attempted to set forth that information.

THE COURT: Yes.

MR. ECKAS: And what we have put in there, your Honor, is the cases in which --

THE COURT: On page five in the third column, the one that says HEMT 2006-6?

MR. ECKAS: It's a chart such as this, your Honor. Yes, that is correct, your Honor.

THE COURT: The date you say is 12/29/2007. It should be 2006, correct?

MR. ECKAS: Yes, it should be, your Honor.

THE COURT: Just to show you, Mr. Eckas, that I read these.

MR. ECKAS: I read this too, your Honor.

THE COURT: I hope you voted.

MR. ECKAS: Anyway this sets forth what we believe matters in terms of overlap, your Honor, and that we believe is when the originators are disclosed and when the alleged misstatements are disclosed, that then you are allowed to represent people even if you didn't personally buy the certificate because then in the Second Circuit's language a common sense concern is raised. The concern as we understand them would be the alleged misrepresentation as opposed to concerns being the fact that there may have been originator that originated a loan in each of the two transactions.

THE COURT: What do you say about Mr. Laitman's Exhibit 9 where the representations seemed to be highly similar?

MR. ECKAS: There are three levels of disclosure here, your Honor.

THE COURT: This is the shelf registration?

MR. ECKAS: Yes. There's the shelf registration statement which as your Honor knows contains as many blanks as it does words. It's in essence a model of what will come. The next level down, of course, is the base prospectus. And that, basically, says we're going do a series of transactions that have the following general characteristics in common. It discloses nothing about each individual specific transaction such that an investor really could evaluate. For example, it really doesn't disclose the average FICO scores or where the

properties are located, the loan to value ratios, anything like that.

So the next level down, your Honor, is what's often called a supplemental prospectus and that's where the real meat and potatoes of the disclosure is. That is about each individual specific deal. So, for example, it's been one of those for 2006-5, a separate one for 2007-2, a separate one for 2006-4. While all of these share the same base prospectus and so, of course, the plaintiff is correct on what the base prospectus says -- it is at such a general level and a general nature that we don't believe that is really what the Court should be looking at. The real disclosures are in the prospectus supplement where it really tells you what the deal is about. And those you will see, your Honor, are quite different from deal to deal.

THE COURT: Where does the Second Circuit in the Goldman or the ANICA case focus in on the different language in the supplemental prospectus?

MR. ECKAS: If I could just have a second, your Honor?

THE COURT: Yes.

(Pause)

MR. ECKAS: I am reading on page 20 now, your Honor. My colleagues was able to find it more quickly than I was. It's on star 12 of the Westlaw cite and the quotation talks about whether the same set of concerns standard and it says:

In the context of claims alleging injury based on misrepresentations, the misconduct alleged will almost always be the same, the making of a false or misleading statement. But whether that implicates the same set of concerns depends on the nature and content of the specific misrepresentation alleged. So at some very general level, your Honor, we do agree that the Exhibit 9 does show that, yes, there are allegedly false or misleading statements but it doesn't go to the nature or content of what really is behind the deals. We believe you have to look to the prospectus supplement for that.

THE COURT: But you'd agree with me that the Second Circuit when they came around to making the decision in deciding which of the 17 trusts could be sued on or which the ANICA IPEW had standing, they didn't look at the prospecti so much as they looked at the common originators. At least that's the way I read it.

MR. ECKAS: Your Honor, our analysis was there's one exception but other than that they looked at common misrepresentations.

THE COURT: All right.

MR. ECKAS: And we have a list of those. Let me just quickly find out for your Honor.

THE COURT: Sure.

(Pause)

MR. ECKAS: It's in Footnote 12, your Honor, on page

21.

THE COURT: Yes. However, plaintiff lacks standing to assert claims on behalf of purchasers from some certificates from the other ten trusts because the only way you can explain is because they didn't have Greenpoint or Wells Fargo as the originators. So footnote 12 identifies the ten trusts if we have the same footnote. Do we have the same footnote? The ten trusts as to which they don't have standing.

(Pause)

MR. ECKAS: The one that they didn't arrive according.

To us, your Honor, is 2007-4F and 2007-AT1.

THE COURT: There's ten of them including those two.

MR. ECKAS: Right. They had the same originator but not the same representation.

THE COURT: OK. All right. But do you agree with Mr. Laitman that all four of these the issues here have the same originators?

MR. ECKAS: We would agree that there is at least one overlapping originator between each of the transactions. Those are not disclosed in the prospectus or prospectus supplements because often they are in very small amounts but, yes, we do agree it is factually correct that you can find one, at least one loan that overlaps in each transaction.

THE COURT: Well, with respect to 2006-5 which is the one that I allowed to proceed, is there any originator other

than New Century?

MR. ECKAS: Yes, your Honor. There are hundreds. New Century originated, approximately, 33 percent of the loans underlying that transaction. The rest were originated from a very large variety of sources.

THE COURT: Did New Century participate in the underwriting for 2006-6 or 2006-4? Is it the chart on page five?

MR. ECKAS: That is the one. We know that they were in 2007-2.

THE COURT: Correct.

MR. ECKAS: Four and six, I do not know the answer to that, your Honor.

THE COURT: Mr. Laitman, what's the answer?

MR. ECKAS: They were not disclosed but there is an answer to your question. I just don't know.

THE COURT: Mr. Laitman, do you know?

MR. LAITMAN: No. As of what we know now because we didn't get discovery New Century was not.

THE COURT: New Century was not involved in 20006-4 and 2006-6, correct?

MR. LAITMAN: We don't know that right now.

THE COURT: OK.

MR. LAITMAN: I am not trying to be evasive but when we get the discovery like we did I know 6-5 we see the complete

list but until we get that we just know what's in the public filing.

THE COURT: All right. So you want me to focus then, Mr. Eckas, in your argument on the disclosures?

MR. ECKAS: Yes, your Honor. We believe what is meant by the same common concerns really is if the same alleged misrepresentations were made. Even if you didn't buy in this that offering if the misrepresentations are the same by the same originators you should be allowed to represent that class anyway.

THE COURT: Well, let me ask you, the misrepresentations is as the Second Circuit found across all 17 trusts were pretty much the same and yet they allowed them only to go forward with regard to seven of the ten. So why were ten excluded if the language, the misrepresented language was all the same?

MR. ECKAS: I don't think, your Honor, that the language about originators, one, will -- correct me if I am wrong -- was the same. For instance, in our case, your Honor, we focused, there's language about New Century's underwriting guidelines in one of the deals. There is allegations -- I am sorry -- there's disclosure about New Century's bankruptcy filing in another one of the deals. Another deal there's no disclosure about underwriting guidelines but there is a list of certain of the originators. There is a variety of different

disclosures from deal to deal. In this set of cases, your Honor, of the disclosure are not all the same.

THE COURT: OK. I don't want to cut you off then. You want to say something about the statute of limitations?

MR. ECKAS: Yes, if I may, your Honor?

THE COURT: Yes, please.

MR. ECKAS: As your Honor knows this case was filed in 2008.

THE COURT: Yes.

MR. ECKAS: At that time it was about one transaction 2006-5.

THE COURT: Correct, the one they purchased.

MR. ECKAS: Yes. And that is correct, your Honor. The second -- I'm sorry -- the first amended complaint was filed in 2009. And in this complaint the three additional transactions were added, your Honor. No motion to dismiss was made as to the original complaint because that was filed in state court.

THE COURT: It was removed?

MR. ECKAS: Correct, your Honor. And then plaintiffs filed an amended complaint. It was agreed we wouldn't answer or move and we would do it with respect to the amended complaint. We did that, your Honor. We made our standing argument, the one that people generally made and accepted. Your Honor accepted that argument and dismissed it.

THE COURT: Yes.

MR. ECKAS: Time then --

THE COURT: Time passed.

MR. ECKAS: -- passed.

THE COURT: Judge Parker came to a different view of what "standing" means.

MR. ECKAS: Yes. And while that time was passing there was a motion to intervene as I am sure your Honor recalls.

THE COURT: Correct.

MR. ECKAS: And the motion to intervene --

THE COURT: It was the Mississippi Carpenters.

MR. ECKAS: Correct. And it would have cured the standing issue with respect to two of the three transactions that were made. Your Honor, we briefed it fully and your Honor did --

THE COURT: That's my December ruling.

MR. ECKAS: It is, your Honor. Give you the exact date if that would be helpful. December 15, 2010.

THE COURT: Correct.

MR. ECKAS: And in essence, what this comes down to, your Honor, is those claims were untimely unless they were entitled to relation back because the time had passed. Now, you found that there was no relation back because the new transactions that were sought to be added were no where

mentioned, discussed, alluded to, etc., in the first complaint. The first complaint was just about the transaction.

THE COURT: But they proceeded on the error that's now apparent after Judge Parker that Mr. Laitman and his client needed standing and he had to purchase and I wasn't going to allow Mr. Laitman to bring in a new group to cure the deficiency that existed as of that time. But if we had the decision from the Second Circuit of 2012 back in 2010 the result may very well have been different. I guess that's Mr. Laitman's argument. You are supposed to put time back in the bottle and allow us to recalculate.

MR. ECKAS: Maybe I'm misunderstanding but as I as I understand plaintiff's reply brief, your Honor, I don't think they took issue with everything I've said but they said, but, the fact that I am overlooking is they say the law changed, right. So the law changed that there is a different standard now for when the statute of limitations begins running.

I think people would agree that assuming it's inquiry notice, that the time had run. If it is the standard, however, that was announced in Merck and Pontiac then it may not have run. And the issue for us, your Honor, comes down to whether Merck and Pontiac extend to 33 Act cases, as well as 34 Act cases. We believe they do not.

Merck, of course, was a 1934 Act case. And the Court's primary discussion in Merck was about scienter and

about the additional things one must allege and prove for 34 Act cases

THE COURT: What do you think about Mr. Laitman's argument that eight district court judges can't be wrong?

MR. ECKAS: I believe your Honor, in fact, took the opposite view and your Honor found that there was a difference between 33 Act and 34 Act cases and that your Honor --

THE COURT: And not one of the eight?

MR. ECKAS: It is not one of the eight. Your Honor is not alone in that regard. There are a number of other courts that have done that as well. I understand your Honor's decision is currently on appeal. I have looked at the decisions by these eight other district judges. Often they have not much analysis behind it. We believe the thinking and analysis of putting the 33 Act and the 34 Act into two different buckets makes sense primarily because the pleading standards are so different. 34 Act is much harder to plead. You know you have to plead and prove scienter, reliance, loss causation and you have Rule 9B.

And to our way of thinking, your Honor, is makes sense to have a somewhere more relaxed view about when the statute of limitations would begin to run when there's a much higher pleading standard. When you only have notice pleading as you do for Section 11 we believe that the standard inquiry notice should continue to apply.

THE COURT: OK.

MR. ECKAS: The only other thing I would ask your Honor is assuming that the new standard set forth in Merck and Pontiac does apply another way I guess of saying is, should your Honor's decision be overruled, we think the plaintiff's knew plenty at that time that they could have made the necessary allegations and we say that based on the complaint that they filed.

In that complaint, your Honor, among other things they say and again this was in 2008, that disclosures had emerged that New Century routinely disregarded the underwriting guidelines and caused the defendant agent, rating agencies not to recognize the true value of the collateral. They go on and say at several other points throughout the brief that it had come to light that New Century had deficient lending practices that it caused it to shut down and to go into bankruptcy. It says, we now know that the underwriting standards were, actually, lucent prior to and during the periods in which the offerings took place. There are a number of places. They point to local newspapers articles where they interviewed employees of New Century who said they were under pressure to approve more loan rather than not.

In the complaint originally filed, your Honor, the plaintiffs say that they have plenty of material that they believe proves what was going on at New Century at that time.

So while it may, indeed, be true that between 2008 and 2009 more information became available and that's, certainly, the case, more did become available but that doesn't mean there wasn't enough available --

THE COURT: From an earlier time?

MR. ECKAS: Yes.

THE COURT: Let me ask -- are you finished now, Mr. Eckas?

MR. ECKAS: Yes.

THE COURT: Let me ask you one question. If New Century is the originator for both 2006-5 and 2007-2, tell me again why you say that 2007-2 should not be included in the amended pleading.

MR. ECKAS: Yes, your Honor. First I should say they are one of the originators for each of those transactions. There are many other originators as well but they are one of them. And the reason we think they shouldn't be included is the discloses about New Century are not similar to each other at all.

THE COURT: And the supplemental prospectus?

MR. ECKAS: Correct, your Honor. 2007 focuses on the fact that New Century had been placed into bankruptcy and on the general downturn in the housing market. Whereas, 2006-5 focused on the underwriting standards in place and the various exceptions that may be made to those.

THE COURT: Anything else you want to say?

MR. ECKAS: Not at this time, your Honor.

THE COURT: Thank you, Mr. Eckas.

Mr. Laitman, before you go --

Mr. Eckas, you said one of my decisions was on appeal. I suppose I should pay more attention to this but where is it on appeal and what's the status of the appeal?

MR. ECKAS: It's fully briefed and argued. It was argued in October. It's the Marshall Freidus decision against Thompson. I'm sorry. Excuse me. It's the Barclay Bank decision, your Honor. And, yes, it's been appealed, your Honor.

THE COURT: Thank you very much.

OK. Mr. Laitman.

MR. LAITMAN: Your Honor, I just want to go to this issue that inquiry notice was applied these would be time-barred and I think it would be just, make it much clearer if I would just refer your Honor first to Exhibit Number 3 in the affidavit of Mr. Eisenkraft. I am sorry. Exhibit Number 1.

THE COURT: OK.

MR. LAITMAN: Exhibit Number One shows the right of all of the Triple A tranches. And what the significance of that is the Triple A tranches made up 93 percent of the entire offering. That's 766 million of the total 825 million bonds

sold. Under inquiry notice for them to prevail and to have the claims dismissed on statue of limitation ground on a motion to dismiss, there must be uncontroverted evidence of the misstatements and omissions as of March 23, 2008 because the amended complaint that asserted claims on this offering 2007-2 was March 23, 2009. So for them to prevail you have to have uncontroverted evidence on March 23, 2008 that a reasonable investor would have known the misstatements.

The downgrade, there are only rating agencies, Moody's and SMP that rated these bonds. As of March 23, 2008, both of them had the highest, maintained the highest Triple A rating on all of the Triple A bonds. That's 93 percent of the offering. No reasonable investor -- and Mr. Eckas cited general events about New Century but a bond holder would never begin to think that those events impact their bonds if 93 percent of the bonds are still Triple A by both Moody's and SMP.

THE COURT: So the rating agencies then control when people that have more -- have inquiry notice, is that it?

MR. ECKAS: Well, for these bonds -- and your Honor on the motion to dismiss it was critical for the claim to survive the motion to dismiss that the bonds were downgraded dramatically to junk but if you look at Exhibit 1, look at the difference. On March 23, 2009 one year later, one year later, look at the bonds. They've collapsed.

THE COURT: March 23, 2008?

MR. LAITMAN: Yes, March 23, 2008, both Moody's and SMP were 93 percent of the offering 80 -- 766 of the 820 million bonds, these were the highest rated bonds maximum safety.

THE COURT: When did the ratings change.

MR. LAITMAN: It's not until you get to March 23, 2009 a year later, well within the period that year that they've collapsed to junk level bonds. So no reasonable investor -- forget about uncontroverted evidence. There is no evidence that a reasonable investor would have known that the bonds, that there was a potential misstatement because they're sitting with bonds that are Triple A.

THE COURT: That was when you brought your initial lawsuit too, wasn't it?

MR. LAITMAN: Well, the ratings were different for the 06-5. This is the 07-2 and one of the reasons --

THE COURT: What were the ratings when you brought the lawsuit on the 06-5?

MR. LAITMAN: They were different.

THE COURT: What were they?

MR. LAITMAN: I don't have them but they were lower. You didn't have all the Triple As at the highest maximum safety level. And so under inquiry notice -- and, your Honor, as I said your intervention decision you adopted that December 20, 2007 date based on the date that the bonds in those two

offerings which is not this one, dropped to junk. And my only point to you with Exhibit Number One is that didn't occur for the 07-2. So under inquiry notice using the exact same analysis there is no way that the statute of limitation defeats the 2007-2 claims.

THE COURT: Right. OK. Mr. Laitman, thank you.

Mr. Eckas, you wanted to say --

MR. LAITMAN: Your Honor, I just wanted to make one other point going on the other point about Goldman if I could?

THE COURT: Very briefly.

MR. LAITMAN: OK. The Goldman complaint and I would just cite, we annexed the Goldman complaint as Exhibit 8 to the Eisenkraft affidavit. And if you go to paragraph 35, it's a very instructive paragraph because it defeats this argument that you have to have pro-sups that New Century has to have the exact same disclosures. And by the way, the underwriting standards were virtually the same. This additional point about bankruptcy has nothing to do with the underwriting. It's another -- it's in a different section of the prospectus.

But paragraph 35 is important because it identifies in the Goldman complaint three prospectuses where there was an explicit pro-sup disclosure of the guidelines and one where there was not and but what the Second Circuit said that all of them, all of them, there's standing to represent all of them because --

THE COURT: You cite that at page nine of your rely brief, correct?

MR. LAITMAN: Correct. OK. Mr. Eckas.

MR. ECKAS: Yes, your Honor. I would just like to address the point of whether or not people know when bonds are downgraded. Obviously, we can't know what everyone in the class knew but I can tell you at least with respect to 2006-5 New Jersey Carpenters Funds knew on February 13, 2008.

THE COURT: That's when they filed their lawsuit?

MR. ECKAS: It was before they filed their lawsuit, your Honor. They were informed in writing by their investment advisor that their holdings in 2006-5 and they held senior tranche, were downgraded from Triple A to B and that they no longer meet the minimum credit quality standard of the fund. So, obviously, I don't know what everyone in the class knew, your Honor, but at least with respect to 2006-5 we have testimony from Mr. Laughenberg and we have a document that they've produced.

THE COURT: How does that help you? Doesn't that make Mr. Laitman's point? You got the information the bonds were downgraded from Triple A to B. They sold the bonds. I don't know whether they sold the bonds but they filed the lawsuit but none of the other trusts were downgraded at that time.

MR. ECKAS: Well, the ones in the other -- were in the same time period, your Honor.

THE COURT: They were? So Chart One Exhibit One is in error?

MR. ECKAS: Just so you understand, your Honor, obviously, Alliance Bernstein didn't alert them to transactions in which they didn't hold them investment, so this letter only addresses that one.

THE COURT: Yes.

MR. ECKAS: Their exhibit one is correct, your Honor, but it only addresses 2007-2 we agree is its own animal. It occurred in a different space and time. The 2006 ratings, they largely happened in the same time period.

THE COURT: Thank you very much. I appreciate it.

MR. ECKAS: You are welcome.

THE COURT: I'll get to this as quickly as I can.

(Adjourned)